S.B.CIVIL SECOND APPEAL NO.209/2004

Allaudin vs. Abdul Rahim and ors.

DATE OF JUDGMENT ::: 6.12.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellant.

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Heard learned counsel for the appellant.

The appellant's suit for redemption of mortgage property was dismissed by the two courts below holding that the suit is barred by time, therefore, the plaintiff/appellant has preferred this second appeal.

According to the plaintiff, the suit property was mortgaged on 13.2.1949. The time before which the property could not have been redeemed is five years, therefore, before 13.2.1954, the plaintiff could not have asked for redemption of the property. According to the plaintiff, on 12.1.1982, the defendants admitted the mortgage in a deed Exhibit-3, therefore, the plaintiff's suit which was filed on 10.1.1988 is within limitation. Two courts below discarded Exhibit-3 and held that the suit is barred by time.

According to learned counsel for the appellant, the

Hon'ble Apex Court in the case of Shapoor Fredoom Mazda vs. Durga Prosad Chamana & Ors. reported in AIR 1961 SC 1236 and in a recent judgment in the case of Food Corporation of India vs. Assam State Co-operative Marketing & Consumers Federation Ltd. & Ors. reported in 2005(1) WLC 67, held that the acknowledgment can be inferred and it is not necessary that in the acknowledgment, there must be specific and unequivocal admission of acknowledging the debt or accepting the facts. It is also submitted that the defendant who himself took the benefit by making a statement in writing in Exhibit-3 cannot subsequently turn around and deny the facts which he has admitted in the document. For this, learned counsel for the appellant relied upon the judgment delivered by the Hon'ble Supreme Court in the case of C.Beepathuma & Ors. vs. Velasari Shankarnarayana Kadambolithaya & Ors. reported in AIR 1965 SC 241.

It is also submitted that the burden was upon the defendant to prove that the document Exhibit-3 was forged one and in this case, he failed to do so, therefore, according to the plaintiff, the two courts below committed serious illegality in holding the suit as barred by time.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the courts below.

The courts below found that the plaintiff is a plumber and the document sought to be relied upon by the plaintiff must have been a document obtained through the help of

employee of Water Works Department for release of water connection and the Courts below found that in Exhibit-3, the language admitting the mortgage appears to have been inserted afterwards. On these grounds, the courts below did not relied upon the document Exhibit-3. In these circumstances, the document was fully considered by the two courts below and it is not a case of misreading or misinterpreting the document but it is a case of assessing the credibility of the document which has been done by the courts below on the basis of evidence. Thus, the judgments relied upon by learned counsel for the appellant have no application in the facts of the case.

In view of the reasons given by the two courts below, it appears that the courts below have considered the evidence and thereafter recorded finding of fact which has not been vitiated by any lawful reason.

No substantial question of law is involved in this appeal. Accordingly, this appeal deserves to be dismissed and hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya